

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF PALM BEACH COUNTY, FLORIDA

These Comments are filed by Palm Beach County, Florida in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Palm Beach County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, here are the facts of video franchising in our community.

The Palm Beach County Cable Television Ordinance operates in conjunction with the franchise agreement, the terms of which are negotiated with the cable company in conjunction with the franchise agreement. These documents are collectively referred to within as the "franchise".

Cable Franchising in Our Community

Community Information

Palm Beach County is one of the largest counties in the state of Florida, with a population of more than 1.2 million people. Our franchised cable providers, serving the unincorporated areas of the County, are Adelphia Cable and Bright House Networks. Our community has negotiated cable franchises since 1968—and has been well-served by that process.

Our Current Franchise

Our current franchise was approved in 1991 and expires at the end of 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator

has a 6-month window, beginning 36 months before the expiration of the franchise, in which to request a renewal under the Federal Act. In May, 2004, that process was begun by a written inquiry from the incumbent cable provider, Adelphia, who is in the process of transferring their local franchise to Comcast as part of their pending purchase agreement. The County is now in the process of negotiating a renewal of that franchise.

In Florida, the funds that were once referred to as “franchise fees” are now collected by the State of Florida as the Communications Services Tax. The funds are then appropriated to the County to, among other things, help cover the cost of regulating the local rights of way and support the countywide government television station, PBC-TV, “Channel 20”.

Speaking of Channel 20, we require the cable operator to provide the following capacity for educational and governmental access, or “PEG” channels on the local cable system. We currently have one channel devoted to educational issues, which is operated by the Palm Beach County School District, and one channel devoted to government issues, the aforementioned Channel 20, which is operated by the County.

Channel 20 has been in existence since 1988, and has a staff of 12 communications professionals, working to provide a wide variety of programming of specifically local interest, in addition to live coverage and taped replays of the meetings of the Board of County Commissioners, the PBC Zoning Commission, the Solid Waste Authority and other special meetings and events.

Channel 20 also plays a crucial role in the County’s public safety plan in times of emergency. During Hurricanes Frances and Jeanne in 2004, and then Katrina and Wilma in 2005, Channel 20 was the official television outlet for the County’s Emergency Operations Center—the source for all media briefings and public safety information.

The cable franchise also grants the operator access to the public rights of way and compatible easements for the purpose of providing television service. Apart from the franchise, the provider is also required to obtain a permit from our Office of Cable Television before it may access the public rights of way. Since 1987 we have issued nearly 4,000 permits for cable-related work in the PROW. All activity conducted within the scope of these permits is closely monitored and inspected by County staff before a given permit is closed. ***This local control of the PROW ensures that all construction and safety standards are maintained in the community’s interest—and it is a key element of the franchise model.***

Our inspectors also keep an eye on the infrastructure as well—not an easy task in such a large service area. If a line is hanging low or a piece of gear

improperly exposed, they can notify the cable company right from the field. Problems are generally resolved in a matter of hours—not weeks.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority, or LFA) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to first determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. This part of the process is called Ascertainment, and after a number of delays caused by the Adelphia bankruptcy and a few hurricanes, Palm Beach County has recently entered that phase of our franchise renewal—with a multi-faceted campaign seeking any and all input from our citizens regarding issues of importance related to cable. This campaign is designed to be completed in a matter of weeks, with the initial contract negotiations occurring concurrently to expedite the process even further.

Once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

Competitive Cable Systems

The cable systems serving our community serve many adjoining municipalities, the majority of which are currently served by Adelphia, soon to be acquired by Comcast. But a small portion of the County is served by Bright House Networks—the only other provider to come into the area in recent memory—which brings to mind a couple of facts that deserve to be included in your consideration of this issue:

Even though the cable business over the years has been built on a foundation of market exclusivity, Palm Beach County has always taken the stance of welcoming competition into our marketplace. Obviously, we have nothing to gain by blocking new entrants from bringing new technologies and services into our community—they only add to what we can offer from an economic development standpoint. The fact is we have had no inquiries from any of these providers, yet we would welcome such interest wholeheartedly. To that end, we are more than willing to negotiate with any provider—in a very expedited fashion—a franchise similar or at least comparable to the one already in place with our incumbent cable operator.

Conclusions

The local franchising process is very much alive and well in Palm Beach County. As the above information indicates, we are experienced at working with providers to see that both the needs of the local community are met and to ensure that the practical business needs of our providers are taken into account.

Local franchising ensures that all local operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with our local requirements—especially with regard to safety.

Local franchises thus provide a means for local government to appropriately oversee the operations of these types of providers in the public interest, and to ensure equal compliance with applicable laws by all. There is no need to create a new Federal bureaucracy in Washington to handle matters that are almost exclusively of local interest.

Local franchising also ensures that the interests of our local customers are protected. When a resident has a line down in their driveway, or a truck in their yard, they are undoubtedly better served by the local office of the LFA—instead of having to call a toll-free number to someone in another state.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access or local emergency alerts, etc.) will be available to meet local needs. Most importantly, in Palm Beach County these factors are equally present for new entrants as for existing users. We simply see the current discussion of how to “fix” local government’s involvement in this process as nothing more than a solution in search of a problem.

Palm Beach County therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants into our community.

Respectfully submitted,

Palm Beach County

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